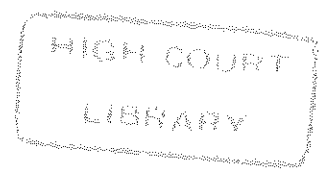




Library



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY-
PERSONAL INJURY CASE NO. 488 OF 2013

BETWEEN

PATRICK MAJAMANDA.....CLAIMANT

AND

HENRY CHAOLOKA.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (AR)**

Mr. Chidothe- of Counsel for the Claimant

Mr. Phiri- of Counsel for the Defendant

Ms. Chida- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is the court's order on assessment of damages pursuant to a judgment entered in favour of the claimant on the 9th of August 2017 by Honourable Justice Tembo. Through a writ of summons, the claimant commenced these proceedings claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. The action emanates from injuries that the claimant suffered in a road accident which occurred on or about 11th January, 2013. Apparently, the 1st Defendant was driving the motor vehicle registration number CZ5012 Nissan Saloon from the direction of Ndirande PTC towards Ndirande Total Filling Station along Ndirande ring road and upon arrival at Somanje area,

he hit the Claimant who was a pedestrian heading the same direction. The 1st Defendant and the 2nd Defendant herein are being sued as driver and insurer of the said motor vehicle.

The matter came for assessment of damages before this court on the 25th of November 2020. The claimant was the sole witness for his case. He adopted his witness statement in which he averred that he is a Tinsman operating a Tinsmith shop in Ndirande. On or about 11th January, 2013, he was hit by motor vehicle registration number CZ5012 Nissan Saloon whilst walking from the direction of Ndirande PTC towards Chinseu bus stage. As a result of the accident, he sustained a sprain on the right hip, multiple bruises on both elbows. His permanent incapacity was assessed at 15%. He exhibits a copy of Medical Report marked "PM 1". Soon after the accident herein he was rushed to a Private Clinic by the driver where he was referred to Queen Elizabeth Central Hospital. He incurred the sum of MK6,000.00 for production of Police and Medical Reports. He exhibits a copy of the Police Report to confirm the cost of Police Report to wit MK3,000.00 marked "PM 2". There was no cross-examination.

Such was the evidence adduced for the assessment of damages. Both parties filed written submissions in support of their respective cases. I shall in the light of the above summary of evidence move on to consider the applicable legal standard and analysis thereto based on the pleadings inclusive of the submissions thereto.

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by Lord Blackburn in the case of **Livingstone v. Rawyards Coal Company** (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C.

773, and **Kalinda -vs- Attorney General [1992] 15 M.L.R. 170 at p.172**. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

In this case, Counsel representing the claimant in his Skeleton Arguments cites the case of **Alinafe Somanje vs- Prime Insurance Company Limited** Personal Injury Cause No. 71 of 2013, in which the Claimant sustained head injury and bruises on the upper lip. The court awarded her the sum of MK1,500,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 12th June, 2013.

Counsel submits that the evidence shows that the Claimant sustained a sprain on the right hip, multiple bruises on the elbows and permanent incapacity of 15%. He opines that the injuries are similar in gravity to those suffered by the Claimant in the authority cited herein. It is his prayer that in the premises and having regard to the depreciation of the Kwacha currency since the decision in the **Somanje** case the sum of MK1,800,000.00 would be reasonable as damages for pain and suffering and loss of amenities of life.

On the other hand, Counsel representing the defendants argues that the Claimant from the pleadings and witness statement stated that he suffered a sprain on the right hip and multiple bruises on both elbows but did not show to the Court any of the areas he sustained the injuries nor if there are any scars or what not to satisfy his claim. He contends that the claimant's witness statement was barely a restatement of his pleadings and that he relied on the medical report he tendered but which is subject to the hearsay considering it was not tendered by the author of the same and should be disregarded by the Court in terms of its contents. It is his prayer that the Claimant's prayer for damages herein should be dismissed for want of proof. He, however, adds that in the unlikely event that the Court decides to award the Claimant damages, the Defendants would like the court to consider the following comparable cases:

Grace Malekano v Prime Insurance Company Limited and John Bamusi Civil Cause No. 3711 of 2016, in which the claimant sustained 2 fractures on the left upper leg and metal rods inserted in the leg. The Court awarded MK1, 800, 000.00 on 2nd October, 2017.

Estery Thomasi (Minor suing through her sister and next friend Alinafe Thomas Bakali) and Isaac Joseph v Prime Insurance Company Limited Personal Injury Cause Number 152 of 2017, in which the 2nd Claimant suffered a sprained right hip joint, traumatic right eye and painful nerve. Her Honour Soko awarded him MK1, 800,000.00 as damages under all heads on 4th September, 2018.

It is Counsel's submission that taking into account the awards above and the injuries sustained by the Claimants, the court if minded to award damages to him, the sum of MK1,500,000.00 would be adequate under all heads.

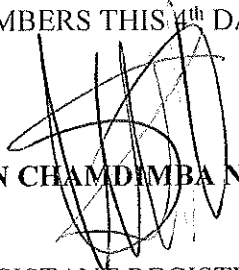
With all that at the back of my mind, I must begin my analysis by stating that I have taken time to consider the prognosis given for the claimant and his present state of health consequent to the accident herein. I had the opportunity to see the claimant in court even though he did not specifically show the court the places where he got injured. I gave meticulous thought to the written submissions filed by both parties. Evidently, the injuries sustained by the claimant were a sprain and soft tissue injuries such as bruises. It is argued on behalf of the defendants that the claimant did not prove his injuries having failed to show the court the scars or what not. The claimant lamented in court that he still feels pain on his back and cannot sit up for a long time. I believe the claimant went through agonizing and excruciating pain from the said injuries and the subsequent treatment.

Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the parties in the light of the relevant and applicable law regarding damages for the claimed heads herein, having also considered the fact that the devaluation of the kwacha, and further upon considering the degree of permanent incapacity of the claimant, this court is of the view that an award of K1,600, 000.00 in respect of pain and suffering, loss of amenities and disfigurement would be fair and just.

The claimant also claims to have incurred the sum of **MK3,000.00** and **MK10,500.00** as cost for production of Police and Medical Reports respectively. I believe these being special damages they ought to have been strictly proved. In this case, there is no proof whatsoever that the same were paid for.

In total, the claimant is awarded K1,603,000.00 under all heads claimed and proved.

DELIVERED IN CHAMBERS THIS 4th DAY OF JANUARY 2021


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR